

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION NO.10757 OF 2006

Date: 30-05-2006

Between:

M/s Sarda Agro Oils Limited ...Petitioner

And

The Commercial Tax Officer and

Another ...Respondents

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION NO.10757 OF 2006

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ORDER *(Per the Hon'ble Sri Justice L.Narasimha Reddy):*

Petitioner is a manufacturing industry. For the assessment year 2001-2002, it was assessed to commercial tax. Subsequently, the second respondent made a reassessment for the same period through his order dated 19-09-2005. The appeal preferred by the petitioner against the said order is pending before the Sales Tax Appellate Tribunal. In relation to stay, pending appeal, the petitioner approached this Court by filing W.P.No.9848 of 2006. A Division Bench of this Court, disposed of the writ petition on 09-05-2006, granting stay on condition of the petitioner deposits 50 per cent of the liability.

As a corollary of the order of reassessment, the second respondent issued a show cause notice, dated 21-11-2005, to the petitioner, directing it to explain as to why penalty to the extent of three times the amount involved should not be levied. The petitioner states that on account of their preoccupation in the matter of pursuing the remedy against the order of reassessment, they could not submit the explanation within the stipulated time. The second respondent passed an order, dated 18-05-2006, affirming the proposal indicated in the show cause notice. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that the failure of his client to submit the explanation within the stipulated time was on account of their preoccupation in the matter of pursuing the remedy against the order of reassessment. He further submits that when the order of reassessment itself is pending adjudication in an appeal, there was absolutely no necessity for the second respondent in proceeding with the determination of the penalty.

Learned Special Government Pleader for Commercial Taxes, on the other hand, submits that the petitioner did not avail the opportunity of submitting the explanation

and the second respondent was left with no alternative except to pass the order, on the basis of the material available with him.

It is true that the second respondent gave ample opportunity to the petitioner to submit explanation. However, it is a matter of record that the petitioner was busy before one forum or the other in the matter of pursuing the remedy against the order of original assessment. Things would have altogether been different, had the second respondent passed the order soon after the expiry of the time fixed for submission of the explanation. For reasons, best known to him, he did not feel the necessity of passing the order till 18-05-2006. In the interregnum, the petitioner had, in fact, approached this Court in the context of stay, during pendency of the appeal filed against the order of reassessment. The cumulative effect of these factors is that the petitioner cannot be treated either as indifferent or negligent in responding to the show cause notice. In view of the amount involved, that too, in the form of penalty, sequel to an order of reassessment, we are of the opinion that the petitioner deserves to be given another opportunity.

Hence, the writ petition is allowed and the order, dated 18-05-2006, passed by the second respondent is set aside. The petitioner shall submit his explanation to the show cause notice, dated 21-11-2005, within one week from today. It shall be open to the second respondent to proceed with the matter, soon after the receipt of the explanation, if necessary by fixing a date of hearing. There shall be no order as to costs.

(L. NARASIMHA REDDY,J)

Dated 30th May, 2006

(D.APPA RAO,J)

vrn/kvni

